92- No. 465

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

DOUGLAS K. LINDAMAN,

PETITIONER

VERSUS

STATE OF IOWA

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

PETITION FOR WRIT OF CERTIORARI

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I. DID THE PETITIONER HAVE "SUFFICIENT REASON" TO OVERCOME HIS FAILURE TO FILE A TIMELY MOTION CHALLENGING THE DEFINITION OF "MARRIED" UNDER IOWA CODE SECTION 708.9 AND A MOTION CHALLENGING HIS CONFUSED MENTAL STATE AT THE GUILTY PLEA HEARING:

WHEREIN PETITIONER'S LEGAL COUNSEL FAILED TO DISCUSS OR DISCLOSE TREATMENT OF GAY MARRIAGES UNDER THE DEFINITION OF "MARRIED";

WHEREIN PETITIONER WAS UNABLE TO CONSULT WITH A PSYCHIATRIST BY OPERATION OF IOWA CODE SECTION 232.74;

WHEREIN PETITIONER SUFFERED FROM EGO-DYSTONIC HOMOSEXUALITY AT THE PLEA HEARING.

WHEREIN SAME-SEX COUPLES ARE INVIDIOUSLY EXCLUDED FROM MARRIAGE ON GROUNDS THAT:

1. IOWA'S EXCLUSION IS A TOTAL BAN UPON AN IMPORTANT INTIMATE HUMAN RELATIONSHIP (ie. SAME-SEX MARRIAGES);

2. IOWA'S EXCLUSION OF SAME-SEX COUPLES IS THE ESTABLISHMENT OF A RELIGIOUS DOCTRINE IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE 1st AMENDMENT.

3. IOWA'S EXCLUSION OF SAME-SEX COUPLES VIOLATES PETITIONER'S RELIGIOUS BELIEFS WHICH SUPPORT MARRIAGES OF SAME-SEX COUPLES, WHEREBY THE POLICY VIOLATES THE PRACTICE CLAUSE OF THE 1ST AMENDMENT;

4. IOWA'S EXCLUSION OF SAME-SEX COUPLES IS INVIDIOUS SEX DISCRIMINATION WHEREIN WOMEN CAN ENTER INTO MARRIAGE WITH MALE, BUT A MAN IS PRECLUDED FROM MARRYING A MALE;

5. IOWA'S EXCLUSION OF SAME-SEX COUPLES VIOLATES THE EQUAL PROTECTION AND DUE PROCESS UNDER THE 14th AMENDMENT WHERE THE STATE MAKES REPRESENTATIONS NOT TO DISCRIMINATE OVER SEXUAL ORIENTATION AND THE STATE RECOMMENDS A SAME-SEX RELATIONSHIP FOR THE PETITIONER;

WHEREIN THE LEGAL COMMUNITY REFUSES

TO ACCEPT GAY ATTORNEYS AS GOOD MORAL CHARACTERS;

AND WHERE THE RESENTENCING COURT ADOPTED THE PSYCHIATRIC PROHIBITION AGAINST EXCLUDING, SEGREGATING AND DEMEANING THE DEFENDANT OVER HIS SEXUAL ORIENTATION IS SIGNFICANT LAW;

WHEREBY THIS MATTER QUALIFIES AS 'NEW AND NOVEL' CONSTITUTIONAL ARGUMENT UNDER REED v ROSS.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	iv
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE WRIT.....	9
CONCLUSION.....	18
APPENDICES.....	
Lindaman v State, Iowa Sup. Ct. 91-737; filed 5-28-92 (Final Order)..	aa
Lindaman v State, Floyd County Dist. Court, 25360-0391, filed 5-8-91	1a
Lindaman v State, Iowa Court of Appeals; no. 1-633, filed 3-24-92....	22a
Lindaman v State, Iowa Supreme Court, 91-737, filed 5-28-92.....	28a
Lindaman v State, No. 25360-0391 Floyd County (Postconviction petition)	29a
Lindaman v State, No. 25360-0391	

Lindaman's Affidavit of Mental State..32a

Ethics Committee v Lindaman, no. 261, Interrogatories.....39a

Thomas Levis letter.....50a

Psychological Evaluation.....52a

Committee on Professional Ethics v Lindaman, 449 N.W.2d 341.....56a

Lindaman's Brief, State v Lindaman, District Court Floyd County No. 25360-0391.....63a

Lindaman Response to State's Answer, State v Lindaman, District Court Floyd County No. 25360-0361.....67a

Lindaman's Appellate Brief, Lindman v State, 91-737, Ia Ct of Appeals.70a

Lindaman's Brief for Further Review, Lindaman v State, Iowa Supreme Court, No. 91-737.....75a

TABLE OF AUTHORITIES

Cases Pages

Bowers v Hardwick, 478 U.S. 186

(1985).....12, 13, 17

Reed v Reed, 404 U.S. 71 (1971)...2, 9, 10

Reed v Ross, 468 U.S. 1 (1984).2, 7, 8, 11

Zablocki v Redhail, 434 U.S. 374 (1976)..... 2,10

Constitution

U.S. Constitution Amend XIV..... 1, 10

Statutes:

Iowa Code Section 709.8.....3, 5, 9

Iowa Code Section 595.1.....3

Iowa Code Section 595.2.....3, 9

Related Materials:

Amici Curia Brief in Bowers v Hardwick, No. 85-140, Federal Supeme Court by the American Psychiatric Association and American Public Health Association.....3

The parties to this action are listed on the title page.

OPINIONS BELOW:

The opinion of the Iowa Supreme Court (App. 28a) is unreported. The opinion of the Iowa Court of Appeals (App. 22a - 27a) is unreported. The District Court opinion (App. 1a -21a) is unreported. The revocation of Lindaman's law license is reported at 449 N.W.2d 341 (App. 56a-62a)

STATEMENT OF JURISDICTION:

The distict court entered the order of summary disposition on May 5, 1992; the matter was affirmed by the Iowa Court of Appeals on March 24, 1992; and the Iowa Supreme Court denied further relief on May 28, 1992 (App. 28a) from which this appeal is taken.

The jurisdiction of the court is invoked under 28 U.S.C. 1257 (2 and 3).

STATEMENT OF CONSITUTIONAL ISSUES:

Under the 14th Amendment to the Federal Constitution:

> ...No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the U.S. Nor shall any state deprive any person of life, liberty or property without Due Process of law; nor deny to any person within its jurisdiction the Equal Protection of the laws.

In Zablocki v Redhail, 434 US 374, 383 (1976) the Federal Supreme Court states:

> "...More recent decisions have established that the right to marry is a fundamental "right of privacy implicit in the 14th Amendment's Due Process Clause."

In Reed v Reed, 404 U.S. 71, 75-76 (1971) the Federal Supreme Court states:

> "Section 15-314 is restricted in its operation to those situations where competing applications for letters of administration have been filed by both male and female members of the same entitlement class established by §15-312 in such situation §15-314 provides that different treatment be accorded to applicants on basis of their sex, it thus establishes a classification subject to scrunity under the equal protection clause....A classification must be reasonable, and not arbitrary and must rest upon some grounds of difference having a fair and substantial relation to the object of

> legislation so that all persons similarly situated shall be treated alike.

Under Reed v Ross, 468 U.S. 1, 16 the Supreme Court states:

> "...Accordingly we hold that were a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failing to raise the claim in accordance with applicable state procedures."

Under Iowa Code Section 709.8 states:

> It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child, with or without the child's consent UNLESS MARRIED TO EACH OTHER, for the purpose of arousing or satisfying the sexual desires of either of them:...(emphasis mine)

Iowa's Marriage Chapter 595 states:

> Section 595.1 - Marriage is a civil contract requiring the consent of the parties capable of entering into other contracts except as hearin otherwise declared.
>
> Section 595. 2 - A marriage between a male and female each 19 years old or older is valid.

The American Psychiatric Association and the American Public Health Association filed an Amici Curia Brief in Bowers v

Hardwick, filed Jan 3, 1986 with the Clerk of the Supreme Court, No. 85-140 which stated at pages 29-30:

> Furthermore, statutes outlawing variant sexual behavior do cause substantial psychological harm, which, in turn, may have serious consequences for physical health. In part because their behavior is punishable by criminal law, homosexuals become stigmatized as "deviants" and are viewed in terms of undesireable stereotypes. This process results in prejudice--called homophobia--against homosexuals by many heterosexual people. Homosexuals develop coping mechanisms, which are common traits in most persecuted groups. These traits can include excessive concern with minority group membership, feelings of insecurity, withdrawal, militancy, and neuroticism. They can als include DENIAL of membership in the group, SELF-DERISION, SELF-HATRED, HATRED OF OTHERS IN THE GROUP, and acting out self-fufilling propheseies about ONE'S ONE INFERIORITY. The great majority of the gay people come to terms with their sexual orientation and INTEGRATE it into their lives. Studies show THESE HOMOSEXUALS ARE THE MOST PSYCHOLOGICALLY WELL-ADJUSTED. But a small group of homosexuals who do not OVERCOME this are more TROUBLED AND DYSFUNCTIONAL, and may act in self-destructive ways and destructively toward other gay people. This clinically observed psychological condition is known as "internalized homophobia." This

> psychological harm is a significant health cost of the Georgia statute. (emphasis mine)

STATEMENT OF THE CASE:

Lindaman pled guilty to two counts of violating section 709.8. He appealed his guilty plea and the Iowa Supreme Court affirmed his guilty plea, but ordered a resentencing.

During resentencing, Judge Goode adopted the Judicial Standard prohibiting the defendent from being excluded, segregated or demeaned over his sexual orientation (App. 63a - 66a)

State prosecutors joined the defendant in stating laws shouldn't discriminate over sexual orientation(App. 63a -66a)

Lindaman filed a postconviction petition challenging constitutionality of the term 'married' and for withdrawl of guilty plea contending a confused mental state precluded a valid plea (app. 1a).

Lindaman filed an affidavit of his confused mental state over being gay and his lack of understanding of gay marriages. (app. 32a - 38a)

Lindaman's confused mental state was confirmed in state psychiatric report about 45 days after his guilty plea which states (App. 48a-49a):

> "...It is evident that Mr. Lindaman does not feel accepted or comfortable yet with his homosexuality...He is a highly educated man who is now being faced with confronting his sexual identity."

Lindaman's attorney during his guilty plea confirms that he did not discuss gay marriages prior to the guilty plea with Lindaman. (App. 50a)

Lindaman noted that he could not consult with a psychiatrist about his sexual conduct because Iowa's confidentiality statute denies him a confidential communication (10a, 32a)

Lindaman filed 13 questions

surrounding sexual orientation bias as part of his Postconviction petition to ensure fairness by the district court judge (App 29a-32a). Said questions include "Does the trial court accept that gays are within the moral criteria to be attorneys."

The trial court refused to address any of the questions but stated it "had no prejudice," but had read Lindaman's disbarment opinion.(App. 24a-25a)

The state requested a summary judgment that Lindaman's failure to file motions of constitutionality and for a motion in arrest of judgment as to his confused mental state.

Lindaman responded that under Reed v Ross, the adoption of the Judicial Standard was a new constitutional tool which overrides the procedural bar. (App. 67a-69a)

The trial court ignored this decision and granted State's summary disposition. (App. 21a)

Lindaman, again, raised Reed v Ross, on appeal to the Iowa Court of Appeals. (App. 72a).

The Court of Appeals refused to address Reed. (App.26a)

Lindaman's appeal to Iowa Supreme Court raised Reed and the judicial standard prohibiting the exclusion, segregation and demeaning of persons over sexual orientation as 'new and novel.' (App. 80a- 81a)

The Iowa Supreme Court refused to grant further review on May 28, 1992 (App. 28a)

During the appeal process the State's psychologist sent an Psychological Evaluation to the Iowa Board of Parole (dated Aug. 6, 1991) (App. 55a) which states:

> "It is the opinion of this writer that Lindaman does sincerely desire to establish long-term relationships with other gays and eventually settle to a monogamous homsexual lifestyle. It is also my belief that if he is required to spend a long amount of time without such a relationship that he very likely will turn once again to

adolescent and pre-adolescent boys for acceptance and self-gradification."

ARGUMENT FOR ISSUANCE OF WRIT:

1. The Iowa Code Section 709.8 divides sexual conduct over the relationship clause "unless married to each other." This classification permits sexual conduct within marriage and criminalizes sexual conduct outside of marriage.

Under Iowa law, only heterosexual couples have been grant marriage licenses. See Iowa Code Section 595.2, supra.

Consequently, the exclusion of same-sex couples makes this a Gay Jim Crow Law which bestows benefits and privileges upon heterosexuals couples while totally criminalizing homosexual relationships.

2. Under Iowa's classification scheme, a female can have a marriage license with a male, but a male is denied the same marital recognition with a male. This licensing classification was unconstitutional in Reed v Reed, supra.

3. The state has failed to offer any rational reason for the distinction for the sex based classification.

4. This classification bans all fundamental same-sex relationships which violates petitioner's 14th Amendment rights as applied under Reed v Reed and Zablocki v Redhail, supra.

5. The dicotomy of the classification sends a clear message to Judges and Juries that heterosexual relationships are better than same-sex relationships. The heterosexual supremacy doctrine precludes any judge or jury from considering 'interalized homophobia' as a factor in sexual expression. This heterosexual supremacy doctrine precludes the defendant from having a jury instruction surrounding marriage which includes gay relationships.

As a gay male, I am a sexual nigger under Iowa's marriage doctrine. I am denied access to the 'bus' of fundamental relationships.

6. As a gay attorney, since my fundamental sexual relationships are not recognized in law, I am inferior to heterosexual attorneys. Latently or patently, I will need to make better arguments than an attorney who is heterosexual. My feelings in court will be down graded because I am known to be gay. Thus, a client's interest will be adversely affected by an attorney's sexual orientation. Iowa's classification creates a caste system of attorneys.

7. This case is unique because of the adoption of the Judicial Standard. Clearly, when heterosexual relationships are recognized in law, while same-sex relationships are denied, it is a policy which excludes, segregates and demeans gays. The segregation policy surrounding marital relationships violates the Judicial Standard.

The judicial standard is a mental tool to ensure fairness in judicial

reasoning. It was unavailable to the petitioner during his plea of guilty.

It is an ethics tool which forms a mental 'grid work' for gay petitioners to address gay Jim Crow Laws.

I would hope that judges and attorneys would have personal ethics which are equal to psychiatrists who promelgated said code. Psychiatrists recognized the dangers of homophobia.

8. Gay litigation cases are now common before the bar. Some guidance is needed.

9. The central case is Bowers v Hardwick, 478 U.S. 186 (1985) which held there is no right of sodomy under the 14th Amendment. The court noted at 190-191:

> "Accepting the decisions in those cases and the above description of them, we think it evident that none of the rights announced in those cases bear any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy that is asserted in this case. NO CONNECTION BETWEEN FAMILY, MARRIAGE, OR PROCREATION ON THE ONE HAND AND HOMOSEXUAL ACTIVITY ON THE OTHER HAS BEEN DEMONSTRATED, EITHER

BY THE COURT OF APPEALS OR BY RESPONDENT." (emphasis mine)

Thus, Bowers can be distinguished as follows:

a) Bowers dealt with sodomy and sex acts vis-a-vis Lindaman deals with the fundamental relationship of marriage.

b) The Bowers case rested upon morality. However, its my belief that the Supreme Court is not going to disbar gay attorneys on lacking 'good moral character' under Supreme Court Rule 5. Thus, the generic morality issue dies.

c) Bowers never dealt with religious issues which support same-sex unions, whereas Lindaman has a Christian belief as an ego-syntonic homosexual that loving, nurturing relationships are supported by the Bible without regard to sexuality. Thus, Lindaman would invoke protection of the 1st Amendment as to religious freedom.

d) In Bowers, the state prosecutors refused to condemn discrimination against

gays. Nor, did the state recommend a same-sex relationship for the Hardwick. In our controversy, the state has condemned discrimination over sexual orientation and its penal clinic supports a same-sex relationship for the petitioner.

10. The position of the American Psychiatric Association and American Public Health was noted on page 5. The health field recognizes that discrimination against gay men and women can internalized homophobia. The state recognized that the petitioner had internalized homophobia because Lindaman was not 'comfortable with his homosexuality.'

11. Under Reed v Ross, Lindaman did not have the Judicial Standard, the State's declaration that laws should not discriminate over sexual orientation, nor the State's recommendation and endorsement of Lindaman in a same-sex relationship.

These tools were unavailable to challenge the constitutionality of the statute. These satisfy the 'new and novel' requirement under Reed v Ross to waive the procedural bar to Lindaman's challenge of constitutionality and a confused mental state to enter a guilty plea.

12. It is petitioner's belief that homophobia and heterosexualism profoundly influenced judicial reasoning in Iowa. Consequently, I now focus and emotionalize the issues to ensure fairness:

Justice Scalia - If the marital Institution has changed over the centuries to eliminate polygamy; by granting women a right of divorce; by granting women a right to inherit spousal property; and the right to enter mixed racial marriages, then grant cert.

Justice O'Conner - Is it possible that a gay male may form an emotional bond with another male which is equal to the bond formed between a female and a male? If

possible, then grant cert.

Chief Justice Rehnquist - Do you personally believe that heterosexual men suffer more emotional loss at the death of their wives than gay men who lose their gay spouses to death? If the emotional loss might be comparable, then grant cert.

Justice Souter - Do the attitudes and feelings of Judge Goode pertaining to his adoption of the Judicial Standard (See page 66a) reflect in your personal ethics, if so please grant cert.

Justice Kennedy - Are there religious institutions which support heterosexual unions and are there religious institutions with support same-sex unions? If there is plurality of support, then grant cert.

Justice Blackmun - If gay teenagers live in a hostile social environment which precipitates the higher suicide rate for gay teens, then grant cert.

Justice Stevens - If you believe AIDS is easily transmitted by individuals who have multiple partners, then the recognition of monogamous gay unions would improve public health...Thus, grant cert to improve public health.

Justice Thomas - If a gay teenager were about to commit suicide over his gay sexuality, would you read him the Majority or Minority opinion in Bowers v Hardwick? If you find the minority opinion to be more acceptable in this situation, then grant cert.

Finally, Justice White - I show you two monogamous couples who have lived happily for 45 years. One couple is heterosexual and the other is gay.

Couple A

Couple B

If you can not differentiate which couple is gay and which is homosexual, then grant cert.

CONCLUSION:

The Petitioner has exhausted all state remedies. This is the last judicial review available to raise the 'status' of gay men and women. Merely review my disbarment from a Gay Jim Crow law where 'gay issues' were concerned irrelevant. (App. 56a) It is an example of homophobia. Someday, gay or lesbian judges will help clarify laws which 'sexually' discriminate.

For the reasons set forth above, it is respectfully submitted that the petition for certiorari be granted wherein the §709.8 is declared unconstitutional or Petitioner's case is remanded back to the Floyd County District Court for a proper evidentiary hearing on consitutionality and a confused mental state.

Respectfully submitted,

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Filed 5-28-92

Clerk Iowa Sup. Ct.

IN THE SUPREME COURT OF IOWA

No. 91-737

Floyd County no. 25360-0391

Mitchell County No. 13096-0391

ORDER

DOUGLAS K. LINDAMAN,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

After consideration by this Court en banc, Lavorato, J., not participating, further review of the above captioned case is hereby denied.

Dated this 28th day of May, 1992.

THE SUPREME COURT OF IOWA

Arthur A, McGiverin,

Chief Justice

Filed 5-8-91

Clerk Floyd County

IN THE IOWA DISTRICT COURTS FOR

MITCHELL AND FLOYD COUNTIES

DOUGLAS K. LINDAMAN,	) Floyd No. 25360-0391
Plaintiff,	) Mitchell 13096-0391
vs.	) ORDER SUSTAINING
STATE OF IOWA,	) MOTION FOR SUMMARY
Respondent.	) DISPOSITION

This application for postconviction relief, filed pursuant to Chapter 663A of the Iowa Code, on March 7, 1991, alleges five grounds:

1) Lack of intelligent plea of guilty due to his condition of mind and inability to define elements and intent;

2) Constitutionality of the statute;

3) Suppression by State of exculpatory evidence;

4) Judicial malfeasance/perference/ prejudice; and

5) Improper sentence/place of confinement.

The defendant entered a plea of guilty on September 12, 1988, to violation of Iowa Code section 709.8, lascivious acts with a child. The defendant was sentenced by Judge Dale E. Ruigh to an indeterminate term of five years on each count, to be served consecutively, on Oct. 21, 1988. Appeal was taken to the Iowa Court of Appeals, which affirmed the judgment entry, but vacated the sentence and remanded for resentencing on November 27, 1989. Defendent was resentenced by judge Allen Goode on April 13, 1990 to an indeterminate term of five years on each count, to be served consecutively. Appeal was taken to the Supreme Court of Iowa. Sentence was affirmed on February 21, 1991.

The defendant is currently serving the sentence at the Mount Pleasant correctional facility.

Hearing, after notice, was conducted, by telephonic means, approved by I.R.C.P. 117 (f). The appellant appeared pro se (previously licensed to practice law). James Kivi, assistant attorney general, appeared for the State of Iowa. The applicant hs made no application for the appointment of counsel. He was pro se in each of the appellate appeals. The court finds him fully competent to represent the issues.

The resisting affidavit, and supplements, by the applicant, a partial record of the resentencing hearing, and the transcript of the plea hearing were received.

The Court makes the following conclusions of law and findings, as to each issue.

***

Iowa Code section 663A.7 is clear that "...All rules and statutes applicable

in civil proceedings...are available to parties." Post-conviction relief proceedings are civil rules. Nuzum v. State, 300 N.W.2d 131, 133 (Iowa 1981).

The Court may grant a motion for summary disposition only when the moving party is entitled to judgment as a matter of law. Brewer v. State, 446 N.W.2d 803, 805 (Iowa 1989).

The standard for summary disposition of a postconviction relief application is analogous to summary judgment procedure provided in civil procedure rules. Ridinger v. State, 351 N.W.2d 734 (Iowa 1983).

Whether a genuine issue of material fact exists, so as to preclude summary disposition under postconviction procedures, turns on whether reasonable minds could draw inferences and reach different conclusions form them. Boge v. State, 309 N.W.2d 428 (Iowa 1981).

We examine the record in the light most favorable to the party restisting summary judgment. State v Allen, 402 N.W.2d 438, 442 (Iowa 1987).

DIVISION V -PLEA WITHDRAWAL

The applicant avers the he could not make an intelligent, knowing, and voluntary plea, without access to health care providers, as when the plea of guilty was entered on September 12, 1988, the applicant had no knowledge of (1) internalized homophobia; Section 302.90 of the Diagnostic and Statistic Manual III(r); the Coming Out Process; Ego-Dystonic Homosexuality vs. Ego-Syntonic Homosexuality; Global intigretion of Sexuality; gays who marry or enter heterosexual relationships; and the different types of sexual and erotic desires.

The applicant admits to having moved from being an ego-dystonic homosexual, one

who has fear and shame over his sexuality, to an ego-syntonic homosexual, who finds and concludes that gay sexual relationships meet his emotional, physical and spiritual needs. He is unclear as to the exact time this movement occurred, but since the plea, in any event. The applicant alleges the former is a mental illness under the diagnostic and statistical manual cited by the applicant.

In the alternative, the applicant requests his plea of guilty be set aside, withdrawn, or vacated, and the sentence emanating therefrom vacated.

The applicant has attached a copy of the appellant's brief in State of Iowa v. Douglas K. Lindaman, reported in a per curiam opinion on February 21 of 1991.

The issues presented for appellate review, after the resentencing, were:

Issue I. Are gay men, as a class, who pursue and/or enter into a monogamous

gay union, within the good moral character to be an attorney in Iowa?

Issue II.. Is it a judicial standard in Iowa "not to be a party to any policy which excludes, segregates, or demeans the defendant because of his sexual orientation?"

Issue III. Did the trial court fail to grant defendant's motion to withdraw his plea; and fail to grant a new trial, on grounds of 1. new evidence; <u>defendant's inability to make a knowing and intelligent plea</u>? (emphasis added)

Issue IV. Does the phrase "unless married to each other" as used in section 709.8 unconstitutionally discriminate against gay sexual unions as no gay marriage doctrine exists in Iowa?

The Iowa supreme court found that the sentences imposed at the resentencing hearing were lawful and with the district court's discretion. Newly discovered

evidence is not a ground to set aside a plea of guilty. State vs. Alexander, 463 N.W.2d 421 (Iowa 1991). "Lindaman's other claims are not properly before the court in this appeal from a resentencing order."

The applicant in this matter and in the resentencing appeal, claims that when he pled guilty to the crimes, he lacked the mens rea, as his lack of access to psychiatry and studies from psychology denied him the resources to prepare and present a defense on the issue of intent. Consequently, he asserts he failed to make a knowing and intelligent waive of his constitutional rights. The applicant proposes that "sexual desire" is easily misunderstood by gays whose gay identity is latent, as well as understanding the homophobia attached to the heterosexual society which adjudicate and legislate these very terms. Finally, he concludes fundamental fairness and injustice results

from his lack of access to gay psychology and judiciary, giving cause for an inherent unfairness.

In the introduction to the appellant's brief, the applicant traces his sexual experiences and feelings from adolescence to the present time, resolving that he has now faced his gayness and conflict, through confrontation, indoctrination, and research, and has moved from being ego-dystonic to ego-syntonic, and is now satisfied that his sexuality meets his emotional, physical, and spiritual needs.

The applicant filed for withdrawal of his plea and/or a new trial as to new evidence surrounding the coming out process, internalized homophobia, and gay sexual abuse, including suicide, as the defendant was denied access to psychological information.

During the first sentencing,

defendant and his counsel delineated that health care providers could not provide health care information without the defendant losing his fifth amendment privilege. He argues the lack of knowledge and access to psychology would result in the applicant being unable to show the lack of mens rea to violate Code Section 709.8 and he had no resources available to understand "sexual desire" and "married" as used in that code section.

As an adjunct, the applicant states he was denied due process because of the provisions of the Iowa Code Section 232.74, which exempts confidential communications to health practioners or mental health professionals relating to evidence regarding a child's injuries or the cause of injuries, and that without that protection, he could not consult with a health care provider without waiving his fifth amendment rights.

There is no question that the applicant did not file a motion in arrest of judgment challenging he adequacy of his guilty plea pursuant to I.R.Cr.P. 23(3). In State of Iowa v. Douglas K. Lindaman, No. 9-452/88-1756, Iowa Court of Appeals, filed November 27, 1989, the court stated:

> "The court fully informed defendant, pursuant to Iowa Rule of Criminal Procedure 8(2)(d), on how to challenge defects in the plea proceedings by filing a motion in arrest of judgment and the appellate consequences of failing to do so. The defendant's failure to challenge the plea proceeding precludes him from challenging the adequacy of that proceeding. I.R.Cr.P. 23(3)(a); see State v Tussing, 340 N.W.2d 257, 258 Iowa 1983). This disposes of those claims made by the defendant's appeal that should have been timely raised by a motion in arrest of judgment."

The Court has read the transcript of the plea hearing. It was unusually thorough and exacting.

In Wenman v. State, 327 N.W.2d 216 (Iowa 1982), Wenman pled guilty to failing to appear, a Class D felony. He took a

direct appeal from his guilty plea conviction. It was dismissed, without reaching the merits, because Wenman had failed to challenge the adequacy of his guilty by a motion in arrest of judgment. Wenman then filed an application for postconviction relief in which he raised the same contentions as on direct appeal. He asserted that Iowa Code Section 663A.8 did not bar the relief sought. The State's motion to dismiss was sustained. Wenman appealed contending that I.R.Cr.P. 23(3)(a) bars only a direct appeal, and does not bar a postconviction relief attack on a guilty plea. Wenman alleged the trial court failed to explain the varying ways of committing the offense and the different penalties attached to it, and failed to establish a factual basis for the plea.

Chief Justice McGiverin concluded that it is the applicants burden, under

Code Section 663A.8, to establish by a preponderance of the evidence sufficient reasoning for failing to file a motion in arrest of judgment in the trial court. Since Wenman asserted no reason at all for his failure to file a motion in arrest of judgment, his appeal is nothing more than an attempt to use postconviction relief to circumvent the statutory requirement and remedies of I.R.Cr.P. 8(2)(d) and 23(3)(a) to file a motion in arrest of judgment to challenge the adequacy of the guilty plea.

The purposes of Rules 8(2)(d) and 23(3)(a) is to allow the trial court to correct defects in guilty plea proceedings before an appeal and thus eliminate the necessity for an appeal. State v Worley, 297 N.W.2d 368, 370 (Iowa 1980). This admirable purpose would be thwarted if we were to allow a postconviction action to attack a guilty plea on the same grounds as a failed direct appeal because of

defendant's failure to file a motion in arrest of judgment after being advised of his right to do so and the consequences for not doing so. Wenman v. State, supra, at p. 218.

Applicant Lindaman's application, as Wenman's, posts no reason for his failure to file a motion in arrest of judgment, other than insinuating the same reason for not raising it at the plea.

The record of the plea hearing was made a part of this record. There is nothing in that record relative to the applicant's mental condition. Nothing in the record indicates that the trial court had any reason to doubt that the applicant was mentally competent. He answered questions with no apparent difficulty and admitted he understood the consequences of the plea. The trial court is not required to investigate petitioner's mental capacity before accepting the applicant's

guilty plea, absent anything in the record indicating a reason for the trial court to doubt that petitioner was mentally competent. State v.Boge, supra, as authority for his position that failure o raise this material issue upon appeal, as it relates to his competency, does not prohibit him from raising it in a postconviction relief proceeding, requiring an evidentiary hearing, when mental confusion is raised.

A significant distinction exists between Wenman and Boge. This distinction was recognized in Munz v. State, 382 N.W.2d 693, 695 (Iowa App. 1985). Boge, although a chapter 663A proceeding, followed an appeal which was dismissed under I.R.App.P. 104 (then Rule 16), which permits dismissal of frivolous appeals, wherein the appellate court does not rule on the merits. That distinction is fatal to Lindaman's claim on this issue.

The applicant complains his attorney, Levis, never advised him about homosexual relationships or to file a motion in arrest of judgment on the issues of "sexual desire" and "married". He attempts to raise this issue of ineffective assistance of counsel again, as being intertwined with this issue. Yet, the Court of Appeals addressed this issue in the first appeal:

> "The defendant apparently claims that he was denied effective assistance of counsel because his attorney failed to properly advise him as to a diminished responsibility defense. As the defendant notes, he was aware of this defense before sentencing. When we review the record, we find that the defendant is unable to show that counsel was ineffective. In order to prevail on claim of ineffective assistance of counsel, the claim of ineffective assistance of counsel, the defendant must show that counsel breached an essential duty and the defendant was thereby prejudiced. Taylor v. State, 352 N.W.2d 683, 685 (Iowa 1984). Ordinarily such claims are reserved for postconviction relief when counsel has an opportunity to provide a full and complete record. State v Coil, 264 N.W.2d 293, 296 (Iowa 1978)
>
> The defendant has failed to demonstrate that any essential duty was breached because he has not

> demonstrated that any diminished responsibility defense would be available to him based on his "mental illness." Nor hs he shown that he was prejudiced in an way. It cannot go unnoticed that the defendant admitted at the guilty plea proceeding that he had in fact formulated the requisite intent for the crime committed.
>
> Since the defendant has failed to make a prima facie showing of ineffective assistance of counsel, it is not necessary to reserve the issue for postconviction relief. Thus, this issue is now resolved adversely to the defendant."

This ground is spurious, redundant, and was raised at least one time, if not more on direct appeal(s).

CONSTITUTIONALITY OF IOWA CODE SECTION 709.

The applicant pled guilty to two counts of lascivious acts with a child, which states:

> "It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child, with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them."

The thrust of the constitutional

argument is that Iowa's failure to provide a gay marriage doctrine violates these intimate associations protected by the constitution and the first amendment; violates the due process clause and the equal protection clause of sexual discrimination; and fails the heightened scrutiny for a suspect class. Additional inferences are the applicant suffered from two psycho-sexual traumas, resulting from experiences at his church, and, a confrontation with certain judges and law partners.

Issues of a constitutional magnitude will not be addressed in a postconviction action if they were not raised first in the trial court. Fryer v State, 325 N.W.2d 400, 405 (Iowa 1982). The Court of Appeals pointed out, in its slip opinion, that the "record does not show that these objections (that section 709.8 is unconstitutionally vague and that chapter

709 is irrational) were raised at any other time prior to appeal."

State v Morehead, 308 N.W.2d 60-64 (Iowa 1981) stated:

> "We have held that in order to preserve for review any alleged error in ruling on the constitutionality of a statute, the party challenging the statute must do so at the earliest available opportunity in the progress of the case. Matters not raised before the trial court cannot be raised for the first time on appeal, including constitutional issues."

Section 663A. 2 specifically forbids the taking of a second appeal under the guise of asking for postconviction relief. Carsteins v Rans, 210 N.W.2d 663, 665 (Iowa 1973).

The applicant's brief in this postconviction relief matter is, with few minor exceptions, identical to the substance of his brief on direct appeal.

The applicant argues that this question is one of first instance in Iowa,

i.e., are gay common law marriages legal, or, does the lack of permitting gay contractual or license marriages violate the equal protection laws and the 14th amendment? The applicant asserts this "new and novel" approach constitutes sufficient reason for failure to raise the claim in the earlier proceeding, citing Cuevas v State, 372 N.W.2d 284 (Iowa 1985). When a constitutional question is involved, the courts make their own independent evaluation of the totality of the circumstances.

Cuevas cited Reed v. Ross, 104 S.Ct. 2901, 82 L.Ed.2d 1 (1984). Reed defined a "new and novel" constitutional argument, constituting a "sufficient reason" for failure to raise the claim in an earlier proceeding, as legally qualifying as unavailable, within reason, to counsel, as one of these scenarios:

1) A decision which expressly overrules Supreme Court precedents; or

2) A decision which overrules a long-standing, widespread rule adhered to by lower courts, although the Supreme Court has not spoken; or

3) A decision which disapproves of a practice of the Supreme Court which arguably has been sanctioned for years.

Similar to Cuevas, the applicant points to no decisions which satisfy Reed. The legal tools to construct the argument wre reasonably available at the time, and the applicant should be charged with the obligation of raising it at its earliest opportunity. This issues is without legal substance.

(Remainder of opinion is irrelevant)

Filed 3-24-92

Clerk Ia Sup. Ct.

IN THE COURT OF APPEALS OF IOWA

No. 1-633 / 91-737

DOUGLAS K. LINDAMAN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Courts for Floyd and Mitchell Counties, Ronald Schechtman, Judge.

Lindaman appeals a judgment of the distict court denying his application for postconviction relief.

AFFIRMED.

Douglas K. Lindaman, Mount Pleasant, pro se, for appellant.

Bonnie J. Campbell, Attorney General, Roxann M. Ryan, Deputy Attorney General, James Kivi, Assistant Attorney General,

and Jerry Folkers, County Attorney, for Appellee.

Considered by Donielson, P.J., and Hayden and Habhab, J.

PER CURIAM

On September 12, 1988, Douglas Lindaman pled guilty to two counts of lascivious acts with a child. This court affirmed defendant's conviction; however, we remanded the case for resentencing. State v. Lindaman, No. 9-452/88-1756 (Iowa App. Nov. 27, 1990). The sentences imposed in the resentencing hearing were affirmed by the Iowa Supreme Court. State v Lindaman, no. 90-690 (Iowa Feb. 21, 1991).

On March 7, 1991, Lindaman filed a postconviction action. A telephone conference was held on May 2, 1991. The district court denied Lindaman's application and granted the State's motion for summary judgment. Lindaman has appealed.

Postconviction actions are action at law which are ordinarily reviewed for errors of law. Hahn v. State, 306 N.W.2d 764, 768 (Iowa 1981).

Lindaman argues the postconviction court was not impartial because the court refused to take Lindaman's "litmus test" which consisted of several questions "to assess and measure actual sexual bigotry to sexual orientation issues." Lindaman's assertation that judges must demonstrate an absence of bias is contrary to established law. It is Lindaman who bears the burden to prove a judge is not impartial. State v. Bear, 452 N.W.2d 430, 434-35 (Iowa 1990).

> To constitute prejudice necessitating a different judge, the alleged bias and prejudice must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case.

Id. at 435. The postconviction court stated it had "no prejudice against the

applicant or the State" and the court's "only knowledge of this matter, prior to its assignment, was through the digested appellate opinions on the disciplinary and original sentencing appeals." Lindaman has failed to carry his burden of proof on this issue.

Lindaman next claims his "ego-dystonic homosexuality and the coming out process" resulted in a "confused mental state" at the time of the plea proceeding thus invalidating the guilty plea. Lindaman failed to file a motion in arrest of judgment to challenge the plea proceeding, however. Lindaman asserts he was suffering from "gay abuse syndrome" which prevented him from filing a motion in arrest of judgment. We do not reach the merits of Lindaman's contention because we conclude he has failed to establish by a preponderance of the evidence "sufficient reason" for failing

to file a motion in arrest of judgment in the trial court. Iowa Code §663A.8 (1991); Wenman v State, 327 N.W.2d 216, 217 (Iowa 1982). Lindaman's present appeal is no more than an attempt to use postconviction relief to circumvent the statutory requirement and remedy of rules 8(2)(d) and 23(3)(a). "Issues of a constitutional magnitude will not be addressed in a postconviction action if they were not raised first in the trial court." Wenman, 327 N.W.2d at 218.

Lindaman next argues the postconviction court erred in ruling he waived any claim as to the constitutionality of Iowa Code section 709.8, lascivious acts with a child. Lindaman claims the statute is unconstitutional because it fails to recognize homosexual marriages with children. Lindaman did not raise this issue in the trial court. The

postconviction court correctly determined this issue was waived. See id.

(Omit materials not raised for appeal)

We have considered all claims raised by Lindaman. We are satisfied no material issue of fact exists. We affirm the summary denial of postconviction relief.

AFFIRMED.

Filed 5-28-92

Clerk Iowa Sup. Ct.

IN THE SUPREME COURT OF IOWA

No. 91-737

Floyd County no. 25360-0391

Mitchell County No. 13096-0391

ORDER

DOUGLAS K. LINDAMAN,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

After consideration by this Court en banc, Lavorato, J., not participating, further review of the above captioned case is hereby denied.

Dated this 28th day of May, 1992.

THE SUPREME COURT OF IOWA

By _____

Arthur A. McGiverin,

Chief Justice

Filed March 7, 1991

Clerk Floyd County

IN THE DISTRICT COURT FOR FLOYD COUNTY

DOUGLAS K. LINDAMAN,) Floyd No. 25360-0391

Plaintiff,

vs

STATE OF IOWA,) Post Conviction

Respondent) Petition

(page 13-14)

DIVISION XI- JUDICIAL PREJUDICE

In order to ensure judicial fairness in the disposition of my last state remedy, the trial court SHALL address the following issues:

1. Does the trial court accept that gays are within the moral criteria to be attorneys in Iowa? Issue one of the appellant's brief is by this reference made a part hereof.

2. When did gays in Iowa become eligible for the moral criteria to be

attorneys, another words, what year did this occur??? Please note that sodomy laws were abandon, in Iowa, in the early 1960's; homosexuality was an illness until Dec. 14, 1973 when psychiatry amended their illness manual; I graduated from high school in 1974; in late 1977, Anita Bryant ran a successful campaign to keep gay teachers out of the Florida Public Schools; in 1985 the Federal Supreme Court upheld sodomy laws in Bowers v Hardwick; my sex offense occurred in 1987 after the AIDS prejudice affected the gay reputation.

3. Does the trial court accept the Judicial Standard, as previously adopted for Floyd and Mitchell Counties? By this reference Issue two of the Appellant Brief is made a part hereof.

4. Would the trial court judge be just as accepting and joyful to have a gay son as to have a heterosexual son???

5. Does the trial court judge belong to any religious sect which discriminates against homosexual sex acts or gay emotional unions??

6. Has the trial court judge ever had prolonged contact (non-sexual) with any homosexual individuals who were not closeted or with the gay subculture???

7. Does the trial court judge have any remorse for his association with the American legal system which blatantly abused and discriminated against African-Americans and women, as part of its history and heritage?

8. Does the trial court judge have any <u>remorse</u> for his association with the American legal system which currently abuses and discriminates against homosexual acts and gay emotional unions???

9. Do you consider homosexual human beings who are 'out of the closet' or

those asking for legal protection of the law, to be 'flauting' their lifestyles??

10. Do you believe that gay teachers in the public school who are open about their sexuality are a 'danger' to children or to morality?

11. Have you ever read a gay novel or watched a gay love story (eg. Torch Song Trilogy)????

12. Do you recognize that some gay men have had themselves castrated or run off into religion to be celibate, in order to avoid dealing with their gay nature???

13. Have you ever engaged in non-reproductive sexual activities (eg. masturbated, anal intercourse, or oral -genital sexual acts)?

These 13 questions need to be addressed by the trial court judge to insure fairness in handling my case.

Filed 5/1/91

Clerk Floyd Coun.

IN THE IOWA DISTRICT COURT FLOYD COUNTY

DOUGLAS K. LINDAMAN,) No. 25360-0391

Applicant,) Affidavit for

vs.) Confused Mental

STATE OF IOWA,) State

Respondent.)

COMES NOW, Douglas K. Lindaman and hereby makes the following affidavit as to my confused mental state on Sept. 12, 1988 when I entered my plea of guilty and which supplements paragraphs 2 and 3 of Division V - Plea Withdrawal in my Post Conviction Petition as follows which I make and affirm as true and correct:

1. I was unable to communicate my feelings as to touching 'A.H.' or my sexuality because such statements could be used against me and because it appeared my conduct may have violated the law.

2. My attorney, Tom Levis had advised

me that my gay identity and my gay lifestyle were irrelevant and immaterial to the case and charge. Consequently, he refused to reach the issue. I felt conflicted over his conclusion, but I tried to accept it.

3. I was told by my attorney to admit sexual desire was involved, otherwise, it would appear to the court that I was minimizing or denying my conduct or desire. I felt I was betraying or understating the crisis I have been through over my identity.

4. I was frightened by Judge Ruigh as he had been appointed by judge McCartney and it appeared that Judge McCartney was influencing Judge Ruigh according to Courthouse rumors. I was told by Levis to forget it, it could never be proven. I was ashame of my profession.

5. Other than my parents, my attorney, the psychologist and one friend, I had not disclosed my gay identity so as

to be comfortable with it. I was at stage two or three of the coming out process (see Reply Brief, page 12a).

6. The State appeared to be lying about its knowledge of the breakin to my home/office. My attorney couldn't get the State to open its fiels. I was frustrated and mad at the legal system.

7. I had no knowledge that the Iowa legal community acceptd gays in the legal profession. I felt betrayed and depressed.

8. I had no knowledge if the ethics committee for C.P.A.s would accept gays in the profession. Again, I was conflicted and confused if I cold be gay and a C.P.A.

9. I had a significant relationship with 'A.H.' which eventually led toa form of sexual touching. I suffered remorse and guilt about touching his penis with my hand, even though, I suffered by a form of psychological insanity at the time of my actions with 'A.H.'

10. I failed to research gay psychology because my attorney told be it was irrelevant. This was a reflection of Tom Levis's own homophobia and heterosexualism which precluded sound judgment. I accepted his position because he was my attorney. I was more conflicted and confused.

11. Since I was a former magistrate, I solumized numerous marriages. My legal mind had been indoctrinated to heterosexualism and acceptance of only non-gay unions. I felt humiliated and emotionally bankrupt.

12. I had exhausted my financial resources with attorney fees and related litigation expenses. I was bankrupt. The Community of Charles City had numerous rumors and speculations about my life which ripped me apart. I was emotionally exhausted by the plea hearing.

(Omit 13 and 14)

15. I had no judicial standard in

Floyd Wounty which treated gays with respect by not excluding, segregating or demeaning them over their sexual orientation. It appeared to me that the judicial system discriminated against gays. I felt more guilt and shame by my sexuality with males.

16. I had made no public statements that I was gay. My parents were still somewhat hostile and confused toward my gayness. They hoped my gayness would go away. I was confused and lacked support.

17. I was tired out by the legal fight. And I didn't want to see more publicity harming A.H.

18. I had received numerous hate mail and hostile phone calls.

19. I was threatened by the father of Scott Barr if I attempted to pursue the breakin matter (to my law office). He told me that I'd be injuried. This was by telephone between my plea and the first sentencing. I was scared.

19 From my attempted suicide (planning) on Nov. 30, 1987 when I finally decided that I had a homosexual component in my personality t the day of the Plea Hearing on Sept. 14, 1988, WAS INSUFFICIENT TIME TO DEVELOP AND ACCEPT MY GAY IDENTITY TO ENTER A PLEA.

20. A State of Iowa report dated Nov. 4, 1988 by Licensed Psychologist Robert Schultz and examiner Kathy J. Morris notes my confusion and conflict in this Oakdale report attached to the P.S.I upon the state's mental tests and interview concludes as follows on Page three:

> (Lindaman is) likely to be experiencing <u>great difficulty</u> with sexual identity. They are rebelling against stereotype sex roles.
> It is conceivable that Mr. Lindaman has failed to acknowledge and accept his sexuality for the past 23 years. Mr. Lindaman does, however seem to harbor quite a lot of resentment towards, not only the legal system, but also members of his hometown with regards to their reaction to his HOMOSEXUALITY. IT IS EVIDENT THAT MR. LINDAMAN DOES NOT FEEL ACCEPTED OR COMFORTABLE YET WITH HIS HOMOSEXUALITY.

SUMMARY:
He is a highly educated man who is now BEING FACED with confronting his sexual identity. It appears that Mr. Lindaman would benefit from counseling which focuses on his SEXUAL IDENTITY along with his ability to express his sexuality. It is likely that Mr. Lindaman will need to come to terms with his anger towards his community.

(omit items 21- 26 as unrelated)

Wherefore, i pray that the court will accept this amendment to my petition and grant relief as is appropriate in the circumstances.

Respectfully submitted,

Douglas K. LIndaman

(subscribed and sworn)

FILED

5-10, 1989

Office of the

Grievance Comm.

BEFORE THE GRIEVANCE COMMISSION

OF THE SUPREME COURT OF IOWA

THE COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION,	)	Docket no. 261
Complainant,	)	Complainant's
vs.	)	Responses to
DOUGLAS K LINDAMAN,	)	Interrogatories
Respondent,	)	

COMES NOW the Complainant and responds to Respondent's interrogatories as follows:

1. Does the conduct of a gay attorney, that is a homosexual attorney

who follows a gay lifestyle, violate any of the following standards, canons, or statutes:

a. EC 1-1; b. EC 1-2; and c. EC 1-3; and d. EC 1-5; and e. EC 1-6; and f. DR 1-102 (A)(6); g. Iowa Code section 602. 10102; h. Court Rule 104

RESPONSE: Homosexuality as such is neither a violation of the above provisions nor is it a defense to a complaint of ethical misconduct. Sexual conduct that is illegal under the laws of the state of iowa may be a violation of the Iowa Code of Professional Responsibility irrespective of whether such conduct is homosexual or heterosexual in nature. For example, a lawyer who commits lascivious acts with a child violates the provisions cited in paragraph number 9 of the complaint.

2. If there is a violation to any part of question one state the nature of the violation?

RESPONSE: see response to interrogatory number one.

3. Has the Complainant's position on its answers to the forementioned questions changed over the past twenty years and, if so, please state when the change occurred and why?

RESPONSE: No. This is the first time the Committee has been asked to take a position on this irrelevant matter.

4. Does the Complainant accept the position that homosexuality is no longer a disease or disorder as viewed by the mental health professionals? See Brief for American Psychological Association and American Public Health Association as Amici Curiae 8-11 in Bowers v Hardwick 478 U.S. 186.

RESPONSE: Complainant objects to this interrogatory as irrelevant. See Iowa R.C.P. 122 (a)

5. Prior to December 1977, the mental

health sevices considered homosexuality a disorder or disease; what should a gay attorney have done in the pre-1973 era to be a healthy attorney and meet the high ethical standards of the legal bar?

RESPONSE: Complainant objects to this interrogatory as irrelevant See Iowa R.C.P. 122 (a).

6 Does the Complainant accept and acknowledge that homophobia exists in the Iowa society?

RESPONSE: Complainant objects to this interrogatory as irrelevant. See Iowa R.C.P. 122 (a).

7. Does the Complainant accept and acknowledge that homophobia creates mental illness and conflict for homosexuals?

RESPONSE: Complaint objects to this interrogatory as irrelevant. See Iowa R.C.P. 122(a)

8. Does the Complainant accept and acknowledge that gay teenagers exist?

RESPONSE: Complainant objects to this interrogatory as irrelevant. See Iowa R.C.P. 122(a)

9. Does the Complainant accept and acknowledge that gay teenagers are sexual abused in a predominately heterosexual society?

RESPONSE: Complainant objects to this interrogatory as irrelevant. See Iowa R.C.P. 122(a).

10 Does the Complainant accept and acknowledge that a gay individual may repress his sexual identity to himself and others for up to 10, 20, or 30 years?

RESPONSE: complainant objects to this interrogatory as irrelevant. See Iowa R.C.P. 122(a).

Charles L. Harrington
1101 Fleming Building
Des Moines, Iowa 50309
515-243-3179

Filed April 9, 1990

Clerk Floyd County

SECOND JUDICIAL DISTRICT

DEPARTMENT OF CORRECTIONAL SERVICES

PRE-SENTENCE INVESTIGATION

State v Lindaman 8064

IOWA MEDICAL AND CLASSIFICATION CENTER

PSYCHOLOGICAL REPORT 11/4/88

(page 2 - 3)

MMPI ASSESSMENT: Mr. Lindaman was administered the MMPI upon which the validity configuration indicates a valid profile. His validity configuration is consistent with individuals who come from a fairly affluent background as well as individuals who are highly educated as Mr. Lindaman has been. Persons with similar profiles tend to be emotionally passive and they harbor very strong unrecognized dependency needs. They have difficulty in incorporating societal values into their own personalities. They are nonconforming and they seem to defy convention through

dress, speech, and behavior. Whereas they do not act out in obviously delinquent ways they tend to harbor feellings of anger and resentment which can lead to brief periods of aggressing outwardly. Temporary remorse and guilt may follow the acting out behavior but these individuals are likely to act out again in the future. THEY ARE LIKELY TO BE EXPERIENCING GREAT DIFFICULTY WITH SEXUAL IDENTITY. THEY ARE REBELLING AGAINST STEREOTYPE SEX ROLES. These individuals are often seen by others as odd, peculiar and queer. Their behavior is erratic and unpredictable. They tend to harbor feeling of insecurity and they have exaggerated needs for attention and affection. They tend to avoid close relationships when they are involved interpersonally and they have impaired impathy and try to manipulate others into satisfying their needs. They may be obsessed with sexual thoughts but THEY ARE AFRIAID that they cannot perform

adequately in sexual situations. Finally, Mr. Lindaman's MacANDREWS SCALE score of 19 does not indicate significant potential to develop an addiction.

MENTAL STATUS EXAM: Mr. Lindaman presented during the interview to be straight forward, blunt, and cooperative. Mr. Lindaman is a man who looks his stated age, he possesses sandy red hair and a light beard. He wears glasses and is a man of average height and weight. He's quite articulate and forceful in his style of speaking. He comes across as a powerful individual who is capable of being very persuasive and can stand up for his own beliefs. IT IS CONCEIVABLE THAT MR. LINDAMAN HAS FAILED TO ACKNOWLEDGE AND ACCEPT HIS SEXUALITY FOR THE PAST 23 YEARS since he tends to intellectualize a great deal. He describes his sexual behavior particularly with regards to the present offense uite detached. He describes himself as a "researcher" who was

exploring the sexual response of an 11 year old. Mr. Lindaman claims he has now been "liberated" due to the present offense and will work towards accepting his sexual identity. Mr. Lindaman does, however, seem to harbor quite a lot of resentment towards, not only the legal system, but, also members of his hometown with regards to THEIR REACTION TO HIS HOMOSEXUALITY. IT IS EVIDENT THAT MR. LINDAMAN DOES NOT FEEL ACCEPTED OR COMFORTABLE YET WITH HIS HOMOSEXUALITY. He seems to feel that other are not judging him as an entire person rather only the behavior for with he is presently incarcerated. His answers were goal directed and coherent. There did not appear to be any disorder of thought content or mood at this time. He reports that he did have some suicidal ideation back in November of 1987 when he was first confronted with these charges. However, he states that now he has dismissed such

thoughts. He was oriented times three and his memory appeared to be intact. In general, Mr. Lindaman is an extremely intelligent man who has the ability to disassociate emotion from his behavior and intellectualize and rationalize his actions.

SUMMARY: Mr. Lindaman is a 35 year old, single white male who is from Charles City, Iowa who is currently serving two five year sentences consecutively for two acts of lascivious acts with a child. Mr. Lindaman has no prior arrest. He is a highly educated man who is now BEING FACED WITH CONFRONTING HIS SEXUAL IDENTITY. IT APPEARS THE MR. LINDAMAN WOULD BENEFIT FROM INDIVIDUAL COUNSELING WHICH FOCUSES ON HIS SEXUAL IDENTITY ALONG WITH HIS ABILITY TO EXPRESS SEXUALITY. It is likely that Mr. Lindaman will need to come to terms with his anger towards his community. He also needs to be confronted with his illegal sexual behavior. Lindaman

states that there is a detective that left Charles City who may be an enemy of his. His name is James Burton and he is in charge of officers at Fort Madison. Completion of the SOTP is recommended prior to release.

X _____ X _____

Kathy J. Morris
Examiner

Robert Schultz
Licensed Psychologist

BRICK, SECKINGTON, BOWERS, SWARTZ

ATTORNEYS AND COUNSELORS

39th and Ingersoll

550 Thirty-ninth Street

Des Moines, Iowa 50312

515-274-1450

April 23, 1991

Mr. Douglas K. Lindaman

805246

218 S

Mount Pleasant, Iowa 52641

Dear Doug:

I received your letter dated April 15, 1991. First of all, you still owe me a substantial amount of money. I am enclosing herein a copy of that bill herein and I expect to get paid.

Secondly, you ask me in your letter whether or not I ever advised you that certain types of homosexual relationships fell within the definition of "married" in the state of Iowa. I did not. I feel

quite confident that you and I did not talk about 709.8 in relationship to homosexual marriages.

Doug, as you know, the bill I am enclosing primarily includes expenses that I advanced on your behalf. You, Douglas Lindaman, asked me to incur those expenses and assured me that you were going to pay me. Please govern yourself accordingly.

Very truly yours,

X Thomas D. Levis

Thomas J. Levis

STATE OF IOWA

DEPARTMENT OF CORRECTIONS

MT. PLEASANT CORRECTIONAL FACILITY

PSYCHOLOGICAL EVALUATION

INMATE' NAME: Douglas K. Lindaman

NUMBER: 805246

DATE: August 6, 1991

EVALUATION INTERVIEW and REVIEW OF FILE:

(Page 4 - 5)

In summary, the scores achieved by Mr. Lindaman on the post-test administration of the psychological instruments listed above describe him as an impulsive, warm-hearted, dominating, bold individual of superior intelligence. He is verball fluent, persuasive, articulate, and demanding in expressing his ideas which he enjoys forcing on other people. He is socially bold, self-confident, enjoys taking risks, and

appears to have whatever resources he needs to meet the challenges of his day. He is one who bases his life on personal as opposed to traditional values. He may be innovative and a creator of new ideas and new social forms which results in him pushing and trying to stretch whatever limits society or other people put before him. He tends to be rebellious and non-conforming in addition to being self-indulgent. He seeks relationships with others, and has become totally committed to his newly accepted lifestyle of homosexuality and spends the majority of his time reading about the subject, corresponding with gay groups and planning ways to force society to accept homosexual marriage relationships with the same openness and understanding that they accept heterosexual marriages. Lindaman responded to all of the questions for the interview with the right words, good

insight into his own abusive behavior as wall as insight into the motivation behind the behavior of others. Because Lindaman is such an intelligent individual and has the ability to be persuasive, verbally fluent, and can explain his ideas in a most acceptable manner, it is difficult to know just how much of what he says is what he truly believes and just how much of his verbalizations have been truly internalized. He claims to have made numerous discoveries ang gained in-depth understanding of his sexual behavior--it is the sincerest hope of this writer that this is the truth. Only time will tell whether or not Lindaman is able to incorporate any of the information he has acquired during his tenure in the SOTP into his lifestyle when he is released from prison. It is the opinion of this writer that Lindaman does sincerely desire to establish long-term relationships with

other gays and eventually settle to a monogamous homosexual lifestyle. It is also my belief that if he is required to spend a long amount of time without such a relationship the he very likely will turn once again to adolescent and pre-adolescent boys for acceptance and self-gratification.

x Helen G. Tiahrt

Helen G. Tiahrt, Ed D.

Staff Psychologist

Mt. Pleasant Correctional Facility

Recorded at 449 N.W.2d 341

THE COMMITTEE ON PROFESSIONAL
ETHICS AND CONDUCT OF THE
IOWA STATE BAR ASSOCIATION,

VS.

DOUGLAS K. LINDAMAN, Respondent.

No. 89-1117

Supreme Court of Iowa

Dec. 20, 1989

PER CURIAM.

Douglas K. Lindaman, an attorney, appeals from the findings, conclusions, and recommendations of the Grievance Commission in this disciplinary proceeding. Lindaman pleaded guilty to two counts of lascivious acts with a child. The two charges arose from Lindaman's sexual contact with an eleven-year-old boy on two separate occasions. Lindaman was sentenced to an indeterminate term of five years on each count. The district court ordered the sentences to run consecutively The court of appeals recently affirmed the convictions. State v Lindaman, No. 9-

452 (Iowa Ct.App. NOv. 27, 1989)(sentences vacated, case remanded for resentencing). On the basis of these felony convictions, the commission recommended that Lindaman's license to practice law be revoked.

At the time of the proceedings before the commission Lindaman was thirty-three years old and resident of Charles City, Iowa. He had been in private practice since 1981 and served for several years as a magistrate in Floyd County.

The Committee on Professional Ethics and Conduct filed a complaint against Lindamanbefore the grievance commission. The complaint alleged that Lindaman's conduct in connection with the two convictions violated the following provisions of the Iowa Code of Professional Responsibility for Lawyers:

DR 1-102(A)(1) (violating disciplinary rule);

DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude);

DR 1-102(a)(6)(engaging in any other conduct adversely reflecting on fitness to practice law); and

EC 1-5(failing to refrain from all illegal and morally reprehensible conduct).

Lindaman filed an answer to the complaint, admitting the conduct that formed the basis for the two criminal charges against him.

However, Lindaman also raised two affirmative defenses in which he attempted to inject homosexuality as an issue in the proceedings. In short, Lindaman claimed that his heterosexual upbring caused him to DENY his homosexual identity since childhood. This denial, he asserts, caused him such internal turmoil and confusion the he was eventually led to commit the two acts to which he plead guilty.

Through several maneuvers, Lindaman PERSISTED in his attempt to make

homosexuality, and more particularly his own homosexuality, an issue. For example, he directed to the committee several interrogatories dealing with societal attitudes toward homosexuality. In reponse, the committee lodged relevancy objections. At the hearing before the commission Lindaman called several witnesses and attempted to question them about such attitudes. He also offered into evidence a movie tht depicted how easy it is to teach prejudice to children.

Believing that homosexuality was not the issue, the commission REJECTED Lindaman's defenses, and found that he was guilty of ethical violations as alleged by the committee. On appeal Lindaman challenges the commission's actions and raises several constitutional questions based on the homosexuality issue.

We agree with the commission that homosexuality is not an issue in these proceedings. Lindaman was charged with,

and pleaded guilty to, lascivious acts with a child. See Iowa Code §709.8, 702.5(1989). Section 709.8 makes it unlawful for ANY person eighteen years of age or older to fondle or touch the genitals of a child for sexual gratification. Such conduct is a crime whether the perpetrator is homosexual or heterosexual. SOCIETY'S VIEWS TOWARD HOMOSEXUALITY ARE NOT RELEVANT ON THE QUESTION WHETHER SUCH A CRIME HAS BEEN COMMITTED.

Moreover, we REJECT Lindaman's suggestion that his inability to deal with his homosexuality somehow excuses the criminal behavior that has led to these disciplinary proceedings. We have consistently refused to excuse ethical misconduct "because of an attorney's ill health, emotional problems, or personality disorders." Committee on Professional Ethics and Conduct v Hoffman, 402 N.W.2d 449, 451 (Iowa 1987). See, also, Comm. On

Prof. Ethi and Conduct vs Vesole, 400 N.W.W.2d 591, 592 (Iowa 1987) (irresistible impulse not a defense in disciplinary proceedings); Comm. on Prof. Ethics and Conduct v Silver, 395 N.W.2d 877, 878 (Ia 86) (criminal defenses of insanity and diminished responsibility not available in disciplinary cases).

We agree with the commission that Lindaman's conduct toward the child constitutes a violation of DR 1-102(A)(1, 3,6) and EC 1-5. The Comm. on rof. Ethics and Conduct v Tomkins, 415 N.W.2d 620, 621 (Ia 1987). In Tompkins we cited with approvel this definition of "moral turpitude" in DR 1-102(A)(3):

> It imports an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow.

Tomkin s, 415 N.W.2d at 623. The legislature has deemed it so important to protect children against sexual contacts

from adults that it has declared such conduct a felony. So not only is such conduct contrary to the usual and accepted mores of society, but it is also a violation of our criminal laws. Lindaman's conduct clearly meets the definition of moral turpitude in DR 1-102(A)(3).

A majority of the commission recommened revocation of Lindamans license. One member recommened a three-year suspension. Because we consider Lindaman's ethical violation so serious and dang dangerous to the public, we think any sanction less than revocation would do violence to our professional code of responsibity.

LICENSE REVOKED

(Page 18 -19, Lindaman Brief, filed with Post Conviction Petition, Clerk Floyd County, March 8, 1991

ISSUE II--IT IS A JUDICIAL STANDARD IN IOWA "NOT TO BE PARTY TO ANY POLICY WHICH EXCLUDES, SEGREGATES, OR DEMEANS THE DEFENDANT BECAUSE OF HIS SEXUAL ORIENTATION."

This judicial standard was promulgated by defendant, in order to insure, that Judge Goodes sentencing decision and the various motions of the court were not influenced by prejudice over sexual orientation.

Background in Ethical Code:

The progenitor of the Judicial Standard was the psychiatrist's ethical code as amended in 1980. The term 'sexual orientation' was added to a statement in their ethical code wich now reads:

> "A Psychiatrist shall not be party to any policy which excludes, segregates, or demeans a person on account of ethnic origin, race, sex,

creed, age, socioeconomic status, or SEXUAL ORIENTATION." Perspectives on Psychotheraphy with Lesbian and Gay Men, by Stein, page 21, 1986.

In accepting this ethical standard, the emphasis and argument was over excluding, segregating, and demeaning the defendant as to his sexual orientation of being gay.

The trial court stated:

> "I have no problem with that statement from the American Psychiatrict/ Association in any respect." (M.T. 53; App. 25)

Prosecutor Barchman: "In fact, I could offer on the PART OF THE STATE that the defendant should not be discriminated against by the Court. We would join in the Defendant's request that he N T BE DISCRIMINATED AGAINST regarding his SAME-SEX ORIENTATION." (M.T. 53;App 25)

Prosecutor McKinley: "I think the defendant has attempted to state something that's ALREADY INHERENT in the system and does not need a restatement. It is the basis on which this criminal justice system in Iowa, as well as the country,..., is based. From my standpoint, its not a matter that needs to be stipulated with. We are all officers of the court. We have taken an oath to abide by the laws. And I believe the laws that are on the books presently are NONDISCRIMINATORY."(emphasis mine) (M.T. 51; App.23)

Anew day has dawned!!! The trial court, Prosecutor Barchman and Prosecutor

McKinley have linked discrimination over sexual orientation with other illegal forms of invidious discrimination by the Psychiatric Ethics Code; namely, race, sex, creed, and ethnic origin.

Invidious discrimination over sexual orientation will no longer be tolerated in judicial thinking and reasoning.

The trial court notes the importance of the standard by responding to McKinley's comment that laws don't DISCRIMINATE:

> Well, I understand what you're saying; but I also understand what Mr. Lindaman is attempting to say; and I don't think that his request is unreasonable or out of place. He is simply asking for some commitment that he will not be discriminated against because of sexual orienation. In fact, the prayer of the motion states s follows: "The Defendant moves the court to adopt a policy not to exclude, segregate, or demean this defendant over his sexual orientation." That is the prayer of the motion; and I have no qualification or hesitation at all in stating to the defendant that I have no intention, either directly or indirectly, or consciously or subconsciously, of excluding, segregating, or demeaning

> his position or his arguments by reason of his personal sexual orientation. And I just have no reluctance in committing to that at all.
>
> And I think you're right, Mr. McKinley, that that is certainly the goal of the legal and justice system. However, I can't fault Mr. Lindaman, as being a member of that part of our society, for not feeling as comfortable as you might perhaps feel that the goal will be attained. So I do not fault him at all for seeking some kind of assurance that he will not be discriminated against because of those issues; and I can tell him without qualification at all that as far as I'm concerned, he will not. And I can look at him directly and say that with every assurance in the world without any kind of hesitation at all."(M.T. 51; App. 23)

Judge Goode is very emphatic about laws not discriminating over sexual orientation. Review the underlied phrases. You sense a real commitment to this first in the nation Judicial Standard over Sexual Orientation as adopted by Judge Goode.

IN THE IOWA DISTRICT COURT FOR MITCHELL AND FLOYD COUNTY

DOUGLAS K. LINDAMAN,) Mitchell No 13096
Applicant,) Floyd No. 25360-0391
vs.) Response to State's
STATE OF IOWA,) ANSWER
Respondent.) (filed 4-9-91)

DIVISION I

COMES NOW, Douglas K. Lindaman and hereby responds to the State's Answer as filed in the Floyd County action as follows:

(omit par. 1-5)

6. Even accepting the State's argument that I have not been timely in raising my issues, the Iowa Appellate Court has recognized that a new or novel constitutional arguments' can waive the timely filing requirement. In Cuevas v State, 372 N.W.ed 284, 287 (1985) recognized this approach in Post Conviction Petitions:

> Our research reveals no cases which specifically address whether a novel constitutional argument would constitute a 'sufficient reason' for failure to raise a claim is in an earlier proceeding. However, Reed v Ross, --U.S.--, 104 S.Ct. 2901, 82 L.Ed2d1 (1984), the United Supreme Court addressed an analogous issue. There the court held that federal habeus corpus relief is available to a prisoner 'where a constitutional is so novel that its legal basis is not reasonably available to counsel.' --U.S.--, 104 S.Ct.at 2910, 82 L.Ed2d 18. In this situation, the court stated that a defendant has cause for failure to raise the claim in accordance with applicable state procedures Id. In reaching this result, the court defined what exactly constitutes a novel or new constitutional rule:
>
> 1) a decision which expressly overrules Supreme Court precedent;
>
> 2) A decision which overturns a long standing, widespread rule adhered to by lower courts, although the Supreme Court has not spoken on point.
>
> 3) A decision which disapproves practice of the Supreme Court which arguably hs been sanctioned for years

The Lindaman controversy meets all three criteria. The acceptance of gay psychology and gay relationships would clearly reverse Bowers v Hardwick. Further, the trial court under Judge Goode accepted the Judicial Standard of not

discriminating against gays. Prior to Judge Goode's judicial standard, it was common practice to discriminate against gays and lesbians.

The area of gay civil rights and gay psychology is an expanding area of law. Recently, Judge lest in Monroe County, Florida declared unconstitutional a 14-year-old state law that prevented homsexuals from adopting children. The Law was declared unconstitutional as violating the constitutional right to privacy, equal protection and due process. Judge Lester stated, "The Statute suffers from the tite notions of homosexuals' unsuitability, as fit parents and evidences discrimination through archaic stereotypes associated with homosexuals." See Iowa City Press Citian, 3-19-91, p.6.

The Lindaman controversy is supported by numerous legal holdings by district court judges across the county which support gay civil rights.

Appellant's brief

Lindaman v Iowa 91-737

Filed 8/31/91 Clerk Ia S Ct.

Page 19:

III. Lindaman has grounds to raise the Constitutionality of section 709.8 of Iowa Code.

(Omit par. 1-6 as irrelevant)

6. Even, contending, that they were not raised in Lindaman I, under Cuevas v State, 372 N.W.2d 284 (Iowa 1985) citing Reed v Ross, 104 S.Ct. 2901, 82 L.Ed2d 1 (1984), NEW AND NOVEL constitutional arguments may, in themselves, be sufficient reason for a failure to raise them in an earlier proceeding. Reed notes the policy justification at U.S. 15-16; L.Ed2d 14-15:

> Counsel's failure to raise a claim for which there was no reasonable basis in existing law does not seriously implicate any of the concerns that might otherwise require deference to a STATE'S PROCEDURAL BAR. Just as it is reasonable to assume that a competent lawyer will fail to perceive the possibility of raising such a claim, it is also

> reasonable to assume that a court will similarly fail to appreciate the claim. It is the nature of our legal system, including constitutional concepts, develop slowly, finding partial acceptance in some courts while meeting rejection in others. Despite the fact that a constitutional concept may ultimately enjoy general acceptance, as the Mullaney issue currently does, when the concept is in its EMBRYONIC STAGE, it will, by hypothesis, be rejected by most courts. Consequently, a rule requiring a defendant to raise a truly novel issue is not likely to serve any FUNCTIONAL PURPOSE...
>
> In addition, if we were to hold that the novelty of a constitutional question does not give rise to cause for counsel's failure to raise it, we might ACTUALLY DISRUPT STATE-COURT PROCEEDINGS by encouraging defense counsel to include any and all remotely plausible constitutional claims that could, some day, gain recognition...
>
> Accordingly, we hold that where a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure the claim in accordance with applicable state procedures.

Clearly, gay issues would fall within the perimeters of REED.

7. Judge Schechtman held that the legal tools to construct the argument were reasonably available at the time and the

applicant should be charged with the obligation of raising it at its earliest opportunity. Further, "The applicant points to no decision which satisfy Reed." Another words, no decision satisfied any of the three prongs listed by Judge Schetchman.

However, the Judicial Standard -- not to exclude, segregate, or demean the defendant over his sexual orientation-- meets prongs two and three of Reed. Consequently, the judicial standard overrules a long-standing widespread rule adhered to by lower courts under prong two. Further, the judicial standard disapproves of a practice of the Iowa Supreme Court which arguable has been sanctioned for years, namely discrimination against gays.

The judicial standard was clearly pled in Lindaman II. The Supreme Court failed to reverse said standard, but rather, affirmed its application.

Further, under U.S. v Unger, 665 F.2d 251, appealed after remand 700 F.2d 445, at 410 (8th Cir., 1983) certiorari denied 104 S.Ct. 339, 464 U.S. 934, 78 L.Ed2d 308 held that:

> The law of the case doctrine generally requires that a decision in the former appeal be followed in a subsequent proceeding unless evidence subsequently introduced is substantially different or the decision is clearly erroneous and works a manifest injustice.

Consequently, in this action, under law of the case, the Judicial Standard is binding upon the acts and decisions of this court.

8. The Iowa legislature considered discrimination against its citizens over matters of sexual orientation, so important, that section 729.5 was amended effective July 1, 1990 to enhance penalties were assaultive acts were couple to discrimination over sexual orientation.

9. A Florida District Court held a Florida law unconstitutional which prohibited gay and lesbians from adopting.

Said rule rested on the same constitutional law articulated in my post conviction petition. See Seebol v Florida, Monroe County, March 14, 1991: CONCLUSION:

I have standing and procedural jurisdiction by raising constitutional issues before the district court in Lindaman I and by satisfying Reed to raise constitutional issues in the Postconviction Petition. Wherefore, I pray for reversal of the trial court's decision to dismiss my constitutional division of my petition.

Lindaman's brief for Further Review to the Supreme Court of Iowa, filed March 14, 1992. (Pages 3, 4, 5, 6) Case No. 91-737

ARGUMENT

I. THE APPEALS COURT ERRED BY FAILING TO FIND "SUFFICIENT REASON" FOR LINDAMAN NOT FILING A MOTION IN ARREST OF JUDGMENT BECAUSE OF A CONFUSED MENTAL STATE AND INEFFECTIVE ASSISTANCE OF COUNSEL.

Standard and Scope of Review: Under Section 663A.6 states: "The trial court may grant a motion for summary judgment when...there is no genuine issue of material fact..."

The trial court and the appeals court held that my ego-dystonic homosexuality and the coming out process from the 'gay abuse syndrome are an insufficient reason for omitting to file a motion in arrest of judgment.

This is a genuine issue of fact. An issue which requires an evidentiary

hearing. A summary judgment shouldn't have been granted.

Mental confusion mandates a hearing. State v Boge 252 N.W.2d 411, 414 (Ia 1977) permits the issue of a confused mental state to be raised where, by the very nature of the issue, the defendant would be unable to perceive his confusion. Similarly, in Munz v State 382 N.W.2d 693, 698 (Ia 1985) held that 'a material issue of fact as to effect of medication given defendant in jail on his ability to understand plea PRECLUDED summary judgement.' Consequently, mental incapacity requires an evidentiary hearing, even when NO Motion in Arrest of Judgment was filed.

2) The Appeals court citation of Wenman v State (Opinion, p.3) is erroneous. Wenman, at 327 N.W.2d 216, 217 cites Thomas v State that shortcomings in petitioner's guilty plea which are not CLEARLY OF RECORD, are not barred in

postconviction actions. Consequently, Wenman's exception in the Thomas reference permits relief for Lindaman.

3. Sexual traumas or disorders have waived 'other' procedural filing requirements. In Callahan v State, 464 N.W.268, 271 (citing Meiers-Post v Schafer, 427 N.W.2d 606, 609 (Mich. App. 1988), the Iowa Supreme Court recognized that abuse victims suffer disassociation which impairs "thinking". Correspondingly, the gay abuse syndrome creates a material issue for waiver of the motion in arrest of judgment.

4. By the operation of Section 232.74, Lindaman could not consult a psychiatrist (Mandetory Reporter) without automatically waiving his 5th Amendment right to remain silent. Consequently, Lindaman failed to receive adequate assistance to raise his defense.

5. Lindaman plead ineffective assistance of counsel where his attorney

failed to examine the gay abuse syndrome. Further, his attorney admits that he failed to advise Lindaman on the definition of marriage before entering into the guilty plea. See exhibit "B". Effective counse would have filed a motion in arrest of judgment. Ineffective counsel is sufficient reason for not file a motion. Gavin v State, 425 N.W.2d 673, 675 (Ia 1988).

Wherefore, Appellant prays that the Supreme Court would remand this matter back to the District Court for an evidentiary hearing on my confusd mental state and ineffective assistance of counsel.

II. ThE APPELLATE COURT ERRED BY FAILING TO PERMIT LINDAMAN TO RAISE CONSTITUTIONALITY OF THE TERM "MARRIED IN SECTION 709.8.

Standard of Review: The appellate court makes its own evaluation of the

TOTALITY OF CIRCUMSTANCES and this is de novo review. Gladson v State, 49 N.W.2d 214 (Ia App 1989).

Analysis: The Supreme Court is not bound to findings of the lower court.

Discussion: The Appellate Court failed to examine the totality of the circumstances. The confused mental state of the appellant from ego-dystonic homosexuality and ineffective assistance of counsel precluded timely filing of the constitutional motion.

The appellate court fails to recite that it examined the TOTALITY of these circumstances.

2. Again, the appellate court cites Wenman. I replead my earlier argument (from page 5) of the Thomas exception.

3. The trial court and the appellate court have ignored the Iowa Supreme Court holding in Cuevas v State, 372 N.W.2d 284 (Ia 1985) citing Reed v Ross, 104 S.Ct. 2901, 82 L.Ed2d 1 (1984) that a new and

novel constitutional argument may, in itself, be sufficient reason for a failure to raise them in an earlier proceeding.

Since my original plea, numerous courts have recognized gay civil rights; Ioa adopted section 729.5 to 'criminalize' sexual orientation motivated assaults; Judge Goode, in the Lindaman sentencing, adopted a judicial standard prohibiting the exclusion, segregation, and demeaning of persons over sexual orientation.

Consequently, Lindaman's motion that Iowa's failure to recognize ANY TYPE OF GAY UNION under secton 709.8 is truly a new and novel argument.

4. The court has recognized heterosexual marriages involving children in Goodwin v Thompson, 2 G.Greene 329 (Ia 1849). Equal protecton and due process under the 14th Amendment require some recognition of gay marriages. See Frontiero v Richardson, 411 US 677, 36 L.Ed2d 583, 93 S.Ct. 1764.

Wherefore, the Appellant prays that the constitutional issue would be remanded back to the trial court on the errs cited above.

III THE APPEALS COURT ERRED BY NOT FIND THAT LINDAMAN ESTABLISHED HIS BURDEN OF PROOF AS TO THE TRIAL COURT'S SEXUAL ORIENTATION PREJUDICE.

1. A judge is required to make an indepth search of his conscious to determine recusal. State v Smith, 242 N.W.2d 320, 323 (Ia 1976).

2. The record fils to show an indepth review. Further, the appellant posed 13 questions to the trial court and to the appellate court. Every judge has refused to disclose his personal predilection (See exhibit A)

3. The Judge's feelings toward gayness or homosexuals is ;not addressed by generic recitals like "no prejudice against the applicant..." (Opinion p. 3)

4. The judge's recital might pas constitutional hurdles, if no specific questions had been posed to the court. However, I did pose questions to the court in my postconviction petition. The appellate court's opinion make no reference to my questions.

5. Prejudice contemplates the STATE OF FEELINGS of the judge. State v Williams, 197 I 813, 197 N.W. 991 (1924)

6. I did everything possible to ascertain the judge's feelings toward gays. He refused to disclose his state of feelings. I was denied Due Process and Fundamental Fairness guaranteed by the 14th Amendment.

Wherefore, I pray that the Supreme Court remand this issue back to the trial court so that a record can be established of the state of feels of the judge.